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**JR Construction of St. Cloud, Ltd. and International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 512.**  
Case 18-CA-13651

August 29, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

Upon a charge filed by the Union on June 16, 1995, the General Counsel of the National Labor Relations Board issued a complaint on January 18, 1996 against JR Construction of St. Cloud, Ltd., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

About April 3, 1996, the Respondent executed and entered into an informal Settlement Agreement which was approved by the Regional Director on April 19, 1996, providing, inter alia, that the Respondent would pay backpay to the two alleged discriminatees, would remove references to their discharges from their personnel files, and would mail copies of the notice to employees.

By letters dated May 29 and July 1, 1996, the Regional Office's compliance supervisor asked the Respondent to comply with the terms of the Settlement Agreement and advised the Respondent that if it did not do so by July 9, 1996, the Settlement Agreement would be revoked and the complaint reissued.

Since about April 16, 1996, the Respondent has failed and refused to comply with any aspect of the Settlement Agreement and thereby has violated, and continues to violate, the terms of the Settlement Agreement, and has nullified and failed and refused to give force and effect to provisions of the Settlement Agreement.

About July 10, 1996, the Regional Director issued an order revoking approval of and vacating and setting aside the Settlement Agreement and reissued the complaint originally issued on January 18, 1996. Although properly served with the July 10 reissued complaint, the Respondent failed to file an answer.

On August 5, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On August 7, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

In the absence of good cause being shown for the failure to file a timely answer,<sup>1</sup> we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Minnesota corporation, with an office and place of business in St. Cloud, Minnesota, has been engaged as a steel erection contractor. During the 1995 calendar year, the Respondent, in conducting its business operations, derived gross revenues in excess of \$1,000,000 and purchased and received at its St. Cloud, Minnesota facility products, goods, and materials valued in excess of \$50,000 from other enterprises located within the State of Minnesota, each of which other enterprises had received the said products, goods, and materials directly from points located outside the State of Minnesota. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

Since about May 5, 1995, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act by interrogating an employee regarding that employee's union membership, activities, and sympathies.

About May 5, 1995, the Respondent discharged its employees Michael Bergquist and Eugene McClain because they assisted the Union and engaged in concerted activities, and took this action to discourage employees from engaging in these activities.

**CONCLUSIONS OF LAW**

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the

<sup>1</sup> Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discharging Michael Bergquist and Eugene McClain, the Respondent has also been discriminating in regard to the hire or tenure or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Michael Bergquist and Eugene McClain, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, JR Construction of St. Cloud, Ltd., St. Cloud, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their union membership, activities, or sympathies.

(b) Discharging employees because they assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Bergquist and Eugene McClain full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Michael Bergquist and Eugene McClain whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges and within 3 days thereafter notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in St. Cloud, Minnesota, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 16, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 29, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees regarding their union membership, activities, or sympathies.

WE WILL NOT discharge employees because they assist the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 512 or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Michael Bergquist and Eugene McClain full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Michael Bergquist and Eugene McClain whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful discharges and within 3 days thereafter notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

JR CONSTRUCTION OF ST. CLOUD, LTD.